

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor : ANDERSON, D.M. et al.  
Patent No. : 7,758,890  
Issue Date : July 20, 2010  
Serial No. : 10/788,413  
Filing Date : March 1, 2004  
For : TREATMENT USING DANTROLENE  
Examiner : WANG, Shengjun  
Art Unit : 1617

REQUEST FOR RECONSIDERATION OF THE  
PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)

**Mail Stop: Petitions**  
Commissioner for Patents  
Washington, DC 20231

July 29, 2010

1. This is a Request for Reconsideration of the Patent Term Adjustment for the above-referenced application pursuant to 37 C.F.R. §1.705(d).
2. The required fee set forth in 37 C.F.R. §§ 1.705(b)(1) and 1.18(e) of Two Hundred Dollars (\$200.00) is concurrently paid by credit card herewith.
3. An Issue Notification/Determination of Patent Term Adjustment ("Determination") was mailed June 30, 2010 in the referenced application indicating the Patent Term Adjustment of 1113 days. A copy of the Determination is attached hereto as Exhibit A.
4. Applicant hereby requests recalculation of the patent term adjustment under 35 U.S.C. §154(b) indicated in the June 30, 2010 Determination.
5. Statement of Facts Involved Pursuant to 37 C.F.R. §1.705(b)(2):  
Subsections (i.) through (iv.) below are presented in satisfaction of the requirements set forth in the similarly numbered subsections of 37 C.F.R. §1.705(b)(2).

(i.) The correct Patent Term Adjustment is 1114 days. The basis of the correction is that the original June 30, 2010 Determination calculated the “PTA 36 Months”, which is the “B delay”, to end on a “12-11-2008” date. Instead, this “PTA 36 Months” should have been calculated to end on the “12-12-2008” date, which is the actual date of filing of the RCE. Further, nowhere in the Transaction History is this “12-11-2008” date found to be associated with a transaction.

(ii.) The following table lists the pertinent periods in the PTA recalculation. The pertinent periods are also graphically presented in Exhibit B attached hereto, which is a marked-up copy of the Transaction History of the referenced application (as downloaded from PAIR at USPTO.gov on July 26, 2010).

| Period           | Delay/Overlap  | Source                 | Days        |
|------------------|--|------------------------|-------------|
| 1.               | A-type USPTO delay: 37 C.F.R. § 702(a)(1)<br>14 mo. mark (05/01/2005) to 1 <sup>st</sup> Action<br>(06/11/2007)                                  | USPTO                  | 771         |
| 2.               | B-type USPTO delay: 37 C.F.R. § 702(b)(1)<br>3 yr. mark (03/01/2007) to RCE filing (12/12/2008)  | USPTO                  | 652         |
| 3.               | Overlap in days for A/B periods 1 and 2<br>(03/01/2007 to 06/11/2007)  | USPTO<br>(A/B Overlap) | (102)       |
| 4.               | Applicant delay: 37 C.F.R. §704(b)<br>86-day extension in responding to 09/25/2007 non-final rejection.  | Applicants             | (86)        |
| 5.               | Applicant delay: 37 C.F.R. §704(b)<br>91-day extension in responding to 06/12/2008 final rejection.  | Applicants             | (91)        |
| 6.               | Applicant delay: 37 C.F.R. §704(b)<br>54-day extension in responding to 03/03/2009 non-final rejection.  | Applicants             | (54)        |
| 7.               | A-type USPTO delay: 37 C.F.R. § 702(a)(2)<br>Issuance of Notice of Allowance at 5 days over four mos. after Applicant’s 07/27/2009 response.     | USPTO                  | 5           |
| 8.               | A-type USPTO delay: 37 C.F.R. § 702(a)(4)<br>Actual Issuance of Patent at 19 days over four mos. after Applicant’s 03/01/2010 issue fee payment. | USPTO                  | 19          |
| <b>Total PTA</b> |  |                        | <b>1114</b> |

- (iii.) The instant application is not subject to any terminal disclaimer.
- (iv.) As shown in the table above, indicated periods 4-6 represent reductions in the Patent Term Adjustment arising from Applicant delay, under 37 C.F.R. §704(b).

6. In view of the foregoing, Applicant hereby petitions for a recalculation of the Patent Term Adjustment to which the patent issuing from the instant application is entitled and issuance of a new determination of PTA in accordance therewith.

7. It is believed that no fees other than those paid concurrently are due in connection with the filing of this paper. However, should it be deemed that any other fee is due in connection with this paper, authorization is hereby given to charge such fee to Deposit Account No. 02-2275.

Respectfully submitted,  
**LUCAS & MERCANTI, LLP**

Dated: July 29, 2010

By: Elizabeth Lee  
Elizabeth Lee  
Reg. No. 66,325

**CUSTOMER NO. 20311**

Attachments

**EXHIBIT A**



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Adams: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO. | ISSUE DATE | PATENT NO. | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|------------|------------|---------------------|------------------|
| 10/788,413      | 07/20/2010 | 7758890    | 820.1020            | 4972             |

20311 7590 06/30/2010  
LUCAS & MERCANTI, LLP  
475 PARK AVENUE SOUTH  
15TH FLOOR  
NEW YORK, NY 10016

## ISSUE NOTIFICATION

The projected patent number and issue date are specified above.

### Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment is 1113 day(s). Any patent to issue from the above-identified application will include an indication of the adjustment on the front page.

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Application Assistance Unit (AAU) of the Office of Data Management (ODM) at (571)-272-4200.

APPLICANT(s) (Please see PAIR WEB site <http://pair.uspto.gov> for additional applicants):

David M. Anderson, Ashland, VA;  
Benjamin G. Cameransi JR., Georgetown, SC;  
Vincent M. Conklin, Richmond, VA;

**EXHIBIT B**

10/788,413 TREATMENT USING DANTROLENE

07-26-2010::13:11:36

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### Transaction History

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| Date              | Transaction Description                                    |  |
|-------------------|--|--|
| 07-20-2010        | Recordation of Patent Grant Mailed                         | ***** "A" USPTO 19-day Delay in issuing a patent after Applicant's 03-01-2010 issue fee payment 37 CFR 1.702(a)(4) |
| +19<br>07-01-2010 | Email Notification   |  |
| 06-30-2010        | Issue Notification Mailed                                  |  |
| 07-20-2010        | Patent Issue Date Used in PTA Calculation                  |  |
| 07-01-2010        | 06-24-2010   | Dispatch to FDC  |
|                   | 06-24-2010   | Email Notification   |
|                   | 06-18-2010   | Mail-Petition Decision - Dismissed   |
|                   | 06-17-2010   | Petition Decision - Dismissed  |
|                   | 02-19-2010   | Petition Entered   |
|                   | 03-09-2010   | Application Is Considered Ready for Issue  |
|                   | 03-01-2010   | Issue Fee Payment Verified   |
|                   | 03-01-2010   | <u>Issue Fee Payment Received</u>  |
| 11-24-2009        | Reference capture on IDS                                   |  |
| 11-24-2009        | Information Disclosure Statement (IDS) Filed               |  |
| 01-14-2010        | TC Return to Pubs  |  |
| 12-28-2009        | Pubs Case Remand to TC                                     |  |
| 01-04-2010        | Email Notification   |  |
| 01-04-2010        | Mail Miscellaneous Communication to Applicant              |  |
| 12-29-2009        | Miscellaneous Communication to Applicant - No Action Count |  |
| 11-24-2009        | Information Disclosure Statement considered                |  |
| 12-02-2009        | Electronic Review  |  |
| 12-02-2009        | Email Notification   |  |
| 12-02-2009        | Email Notification   |  |
| 12-02-2009        | Mail Examiner's Amendment                                  |  |
| 12-02-2009        | <u>Mail Notice of Allowance</u>                            |  |
| +5<br>11-24-2009  | Information Disclosure Statement (IDS) Filed               | **** "A" USPTO 5-day Delay in responding to Applicant's 07-27-09 Response 37 CFR 1.702(a)(2)                       |
| 11-24-2009        | Document Verification                                      |  |
| 11-24-2009        | Notice of Allowance Data Verification Completed            |  |
| 11-24-2009        | Case Docketed to Examiner in GAU                           |  |
| 11-27-2009        | <u>Examiner's Amendment Communication</u>                  |  |
| 11-23-2009        | Information Disclosure Statement considered                |  |
| 07-27-2009        | Case Docketed to Examiner in GAU                           |  |
| 10-06-2009        | Date Forwarded to Examiner                                 |  |
| 09-18-2009        | <u>Response after Non-Final Action</u>                     | *** Applicant's 54-day Delay in responding to 03-03-09 Office Action 37 CFR 1.704(b)                               |
| 07-27-2009        | Request for Extension of Time - Granted                    |  |
| 07-27-2009        | Information Disclosure Statement (IDS) Filed               |  |
| 07-27-2009        | Information Disclosure Statement (IDS) Filed               |  |
| 06-03-2009        | 12-22-2008   | Electronic Information Disclosure Statement  |
|                   | 04-30-2009   | Mail Examiner Interview Summary (PTOL - 413)   |
|                   | 04-20-2009   | Examiner Interview Summary Record (PTOL - 413)   |
|                   | 03-03-2009   | <u>Mail Non-Final Rejection</u>  |
|                   | 03-02-2009   | Non-Final Rejection  |
|                   | 02-19-2009   | Examiner Interview Summary Record (PTOL - 413)   |
|                   | 12-22-2008   | Information Disclosure Statement considered  |
|                   | 12-12-2008   | Information Disclosure Statement considered  |
|                   | 12-12-2008   | Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received  |
|                   | 12-12-2008   | Electronic Information Disclosure Statement  |
|                   | 12-31-2008   | Date Forwarded to Examiner   |
|                   | 12-31-2008   | Date Forwarded to Examiner   |

|                              |   |  |
|------------------------------|---|--|
| 12-12-2008                   | Request for Continued Examination (RCE)                 | B Delay 652  |
| 12-31-2008                   | Disposal for a RCE / CPA / R129                         |  |
| 12-12-2008                   | Request for Extension of Time - Granted                 |  |
| 12-22-2008                   | Information Disclosure Statement (IDS) Filed            |  |
| 12-23-2008                   | Change In Power of Attorney (May Include Associate POA) |  |
| 12-18-2008                   | Correspondence Address Change                           |  |
| 12-12-2008                   | Information Disclosure Statement (IDS) Filed            |  |
| 12-12-2008                   | Workflow - Request for RCE - Begin                      |  |
| 06-12-2008                   | Mail Final Rejection (PTOL - 326)                       |  |
| 06-11-2008                   | Final Rejection   |  |
| 04-16-2008                   | Date Forwarded to Examiner                              |  |
| - 86                         | 03-20-2008  | Response after Non-Final Action  |
| *                            | 03-20-2008  | Request for Extension of Time - Granted  |
| 12-25-2007                   | Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received   |  |
| 09-25-2007                   | <u>Mail Non-Final Rejection</u>                         |  |
| 09-17-2007                   | Non-Final Rejection                                     |  |
| 06-28-2006                   | Information Disclosure Statement considered             |  |
| 10-30-2006                   | Information Disclosure Statement considered             |  |
| 07-10-2007                   | Date Forwarded to Examiner                              |  |
| 07-09-2007                   | Response to Election / Restriction Filed                |  |
|                              | Mail Restriction Requirement                            |  |
| (B) Delay 06-11-2007         | Requirement for Restriction / Election                  |  |
| 03-01-2007                   | Preliminary Amendment                                   |  |
| 12-31-2006                   | Information Disclosure Statement (IDS) Filed            |  |
| 10-30-2006                   | Information Disclosure Statement (IDS) Filed            |  |
| 10-30-2006                   | Information Disclosure Statement (IDS) Filed            |  |
| 06-28-2006                   | Information Disclosure Statement (IDS) Filed            |  |
| (A) Delay 06-28-2006         | Preliminary Amendment                                   |  |
| 01-31-2006                   | 10-22-2004  | IFW TSS Processing by Tech Center Complete   |
|                              | 10-22-2004  | Case Docketed to Examiner in GAU   |
|                              | 07-22-2004  | Application Return from OJPE   |
|                              | 07-22-2004  | Application Return TO OIPE   |
|                              | 07-21-2004  | Application Dispatched from OIPE   |
|                              | 07-22-2004  | Application Is Now Complete  |
|                              | 06-15-2004  | Payment of additional filing fee/Prexam  |
|                              | 06-15-2004  | A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic |
|                              | 05-19-2004  | Notice Mailed--Application Incomplete--Filing Date Assigned  |
|                              | 03-31-2004  | Cleared by OIPE CSR  |
|                              | 03-18-2004  | IFW Scan & PACR Auto Security Review   |
| 03-01-2004                   | Initial Exam Team nn                                    |  |
| <a href="#">Close Window</a> |   |  |
| Filing Date: 03-01-2004      |   | Appl. delay  |
| 14 month mark: 05-01-2005    | (+)   | (+5)   |
| 1st OA: 06-11-2007           | (771 A- delay)  | (5)  |
| 3 Yr. mark: 03-01-2007       | (652 B-delay)   | (+19)  |
| RCE filed: 12-12-2008        | (1423)  | (-54)  |
| overlap A + B: 102 days      | (102 overlap)   | 231 days   |
|                              | (1321 days)   | 24 days  |

$$PTA = (1321 + 24) - (231) = 1114 \text{ days}$$